

**RULES
OF
THE ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 0100-6
INTRA-INDUSTRY CONDUCT AND REGULATIONS**

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0100-6-.01 DEFINITIONS.

- (1) General. As used in this chapter, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in Title 57 of the Tennessee Code Annotated shall have the meaning assigned to it by that Title.
- (2) Consignment Sales. The term “consignment sales” shall mean arrangements where the trade buyer is under no obligation to pay for distilled spirits or wine until they are sold by the trade buyer.
- (3) Equipment. The term “equipment” shall mean all functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer’s business.
- (4) Exchange. The transfer of distilled spirits, wine, or other product from a trade buyer to an industry member with other products taken as a replacement.
- (5) Industry Member. The term “industry member” shall mean any person engaged in business as a manufacturer, distiller, rectifier, blender, non-resident seller, or other producer, or as an importer, or wholesaler, of distilled spirits, or wine, or as a bottler, or warehousemen and bottler, of distilled spirits, licensed in the state of Tennessee.
- (6) Product. The term “product” shall mean distilled spirits, wine, or alcoholic beverages, as defined in Title 57 of the Tennessee Code Annotated.
- (7) Product Display. The term “product display” shall mean any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, and beverages are displayed and sold.
- (8) Retailer. The term “retailer” shall mean any person engaged in the sale of distilled spirits, wine, or alcoholic beverages to consumers, licensed in the state of Tennessee, whether such sales are made for consumption on or off the premises where sold.
- (9) Retail Establishment. The term “retail establishment” shall mean any premises where distilled spirits, wine, or alcoholic beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.
- (10) Return. The transfer of distilled spirits, wine, or other product from a trade buyer to the industry member from whom purchased, for cash or credit.
- (11) Trade Buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or other product.

Authority: T.C.A. §§57-1-201 and 57-1-209. **Administrative History:** Original rule filed September 9, 1983; effective October 11, 1983.

0100-6-.02 GENERAL PROHIBITIONS.

- (1) Industry members are prohibited from acquiring or holding any interest in any license (State, county, or municipal) with respect to the premises of a retailer.
- (2) Industry members are prohibited from acquiring any interest in real or personal property owned, occupied, or used by a retailer in the conduct of the business.
- (3) Subject to the exceptions listed herein, industry members are prohibited from furnishing, giving, renting, lending, or selling to the retailer any equipment, fixtures, signs, supplies, money, services, or other thing of value. The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or alcoholic beverages or by storing such for a retailer by an industry member is prohibited.
- (4) Industry members are prohibited from paying or crediting the retailer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.
- (5) An industry member is prohibited from requiring a trade buyer to take and dispose of any quota of distilled spirits, wine, or malt beverages.
- (6) A requirement that a retailer purchase one product in order to purchase another is prohibited. This includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling at a special combination price, two or more kinds of brands of products to a retailer, provided (a) the retailer has the option of purchasing either product at the usual price, and (b) the retailer is not required to purchase any product he or she does not want.
- (7) No retailer shall obtain alcoholic beverages from any source not designated to sell that brand under the brand registration statute, T.C.A. Sec. 57-3-301.
- (8) No manufacturer, importer, non-resident seller, or any other representative thereof may solicit orders in any manner for alcoholic beverages from anyone in this State except from those holding wholesale liquor licenses.
- (9) It is unlawful for one industry member to sell, offer for sale or contract to sell to any trade buyer, or for any such trade buyer to purchase, or contract to purchase any products:
 - (a) on consignment; or
 - (b) under conditional sale; or
 - (c) with the privilege of return; or
 - (d) on any basis other than a bona fide sale; or
 - (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer.

Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

- (10) (a) Tied Sales Prohibited. A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry members from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(Rule 0100-6-.02, continued)

- (b) Exchange. The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of “other “ products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

Authority: T.C.A. §§57-1-201 and 57-1-209. **Administrative History:** Original rule filed September 9, 1983; effective October 11, 1983.

0100-6-.03 EXCEPTIONS TO GENERAL PROHIBITIONS.

- (1) General. An industry member may furnish a retailer equipment, inside signs, supplies, services or other things of value only in accordance with the exceptions provided in this part. A cost adjustment factor will be used to periodically update the dollar limitations prescribed in this subpart. The dollar limitations used herein are expressed in 1980 dollars, and the Director of the Commission shall establish the adjusted dollar limitation on an annual basis beginning effective January, 1983. The cost adjustment factor is a percentage equal to the change in the Bureau of Labor Statistics Consumer Price index.
- (2) Product Displays.
 - (a) General. An industry member may furnish, give, rent, loan, or sell product displays to a retailer, subject to the limitations prescribed in paragraph (b) of this section.
 - (b) Conditions and Limitations.
 - 1. The total value of all product displays furnished by an industry member under paragraph (a) of this section may not exceed \$100 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.
 - 2. Industry members may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of \$100 per brand.
 - 3. Product displays shall bear conspicuous and substantial advertising matter.
- (3) Interior Signs.
 - (a) General. An industry member may furnish, give, rent, loan, or sell to a retailer inside signs which bear advertising matter. Inside signs include such things as posters, placards, designs, mechanical devices, and window decorations.
 - (b) Conditions and limitations. Industry members may furnish inside signs to retailers under the following limitations:
 - 1. The inside sign shall have no secondary value and be of value to the retailer only as advertising.
 - 2. The inside sign shall be used only in the windows or other interior portions of the retail establishment.
 - 3. The industry member may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

(Rule 0100-6-.03, continued)

- (4) Retailer Advertising Specialties.
 - (a) General. An industry member may furnish, give, rent, loan, or sell retailer advertising specialties to a retailer if these items bear advertising matter, are only for distribution to a consumer, and are primarily valuable to the retailer as point of sale advertising. These items are limited to calendars, athletic schedules, recipe pamphlets, sporting guides, and other printed material.
 - (b) Limitations.
 - 1. The total value of all retailer advertising specialties furnished by an industry member to a retailer may not exceed \$50 per brand in any one calendar year per retail establishment. The value of a retailer advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded.
 - 2. Industry members may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of \$50 per brand.
- (5) Wine Lists. An industry member may furnish, give, rent, loan, or sell wine lists or wine menus to retailers.
- (6) Samples. An industry member may furnish or give a sample of distilled spirits, wine, or alcoholic beverages to a retailer who has not previously purchased the brand from that industry member. For each retailer establishment, the industry member may give not more than 200 milliliters of any brand of distilled spirits, and not more than 750 milliliters of any brand of wine. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next largest size.
- (7) Combination Packaging. An industry member or trade buyer other than retailers who sell for consumption on the premises may package, distribute and sell distilled spirits, wine, or alcoholic beverages in combination with other related items provided that:
 - (a) The items have no value or benefit to the retailer other than that of having the potential of attracting purchasers and thereby promoting sales;
 - (b) The package (product plus non-alcoholic item) is designed to be delivered intact to the consumer;
 - (c) The non-alcoholic item does not exceed the cost of the product to the industry member or trade buyer creating the package;
 - (d) The non-alcoholic item may not be a perishable food item; and
 - (e) Any additional cost incurred in creating the combination package may not be borne by the industry member.
- (8) Educational Seminars. An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar.
- (9) Stocking, Rotating and Pricing Services. Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or alcoholic beverages which they sell, provided products purchased from other industry members are not altered or disturbed. The industry member may

(Rule 0100-6-.03, continued)

rearrange or reset only such portion of a store or liquor department as is necessary for the placement of its product.

- (10) **Consumer Promotions – Direct Offerings.** A manufacturer, supplier, importer, distiller, or winery may offer coupons for refunds and contest prizes, premium offers and sweepstakes to consumers only on the following basis:
- (a) A refund coupon may be distributed to a consumer only as an element of the industry members advertising or marketing program through newspapers or magazines. Retailers for on-premise consumption may not participate in such programs.
 - (b) Contest prizes, premium offers, sweepstakes and like items may be offered by industry members directly to consumers at point-of-sale and through newspapers or magazines. Retailers for on-premise consumption may participate in such programs.
 - (c) Officers, employees and representatives of wholesalers and retailers are excluded from participation. Nothing of value may be supplied to a trade buyer by an industry member to induce or reward participation in any practice allowed hereunder. Industry members are prohibited from requiring any retailer to participate in any practice allowed hereunder nor shall a particular retailer or group of retailers be specified by an industry member for participation in any practice allowed hereunder.
 - (d) No coupon shall be permitted for a refund by a retailer at the point-of-sale (“cents-off” coupons). Refund coupons may be utilized by a manufacturer, supplier, importer, distiller or winery which are redeemable by a consumer mailing directly to such manufacturer, supplier, importer, distiller or winery, or an authorized redemption agent.
 - (e) No coupon may be redeemed by, or refund sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No contest or sweepstakes prize shall be awarded to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee. No premium offer shall be sent to any person who is under the age set by law to purchase, possess, and consume alcoholic beverages in Tennessee.

Authority: T.C.A. §§57-1-209, 57-1-201, and 57-3-104. **Administrative History:** Original rule filed September 9, 1983; effective October 11, 1983. Amendment filed October 19, 1984; effective November 18, 1984. Amendment filed July 18, 1989; effective September 1, 1989. Amendment filed February 8, 1994; effective April 24, 1994.

0100-6.04 LIMITATION ON CREDIT SALES.

- (1) No alcoholic beverage shall be sold by any wholesaler nor shall any retailer purchase any alcoholic beverages except for cash or on terms requiring payment by the purchaser within ten (10) days.
- (2) Each and every delivery of merchandise by a wholesaler to a retailer must be accompanied by an invoice of sale bearing the actual date of the delivery. A wholesaler must keep and maintain a current and accurate accounts receivable ledger as a part of his records.
- (3)
 - (a) The 10-day credit period begins on the day immediately following the invoice date and concludes at midnight of the tenth day including Sundays and holidays, immediately following which the account is considered delinquent.
 - (b) Payment sent by mail and postmarked by midnight of the due date shall be considered compliance.
- (4)
 - (a) Wholesalers must deposit all checks for payment of retail accounts no later than the first banking day following actual receipt of said check.

(Rule 0100-6-.04, continued)

- (b) An account paid for by check within the 10-day credit period but which is dishonored for any reason after the 10-day credit period has elapsed is delinquent.
 - (c) A wholesaler shall not accept and a licensee shall not offer a postdated check.
- (5) A wholesaler must report each and every delinquent account as set forth above by telephone to the Commission's nearest Regional Representative, and, as each such account is paid in full, he shall report that fact to the Commission's representative also.
- (6) A retailer reported delinquent shall not be permitted to purchase merchandise for cash or otherwise from any licensed wholesaler until said licensee satisfies all obligations then outstanding to all wholesalers although the ten (10) day credit period may not have expired on such obligations.
 - (a) If such delinquency is the first in a license year, and such retailer sells for consumption on the premises all wholesalers will be required to sell such retailer merchandise only for cash on delivery for a minimum period of thirty (30) days from notice by the Commission.
 - (b) If such delinquency is the second in a license year, all wholesalers will be required to sell such retailer merchandise only for cash on delivery for a period of twenty (20) days, if such retailer sells for off-premises consumption, or for a period of sixty (60) days, if such retailer sells for on premises consumption.
 - (c) If such delinquency is the third in a license year, all wholesalers will be required to sell such retailer merchandise only for cash on delivery until notice to the contrary by the Commission. Such retailer shall be required by the Commission to appear and show cause why the retail liquor license should not be suspended or revoked, or why said licensee should not be placed on a cash on delivery basis for all merchandise sold to said licensee by any wholesaler for a period fixed by the Commission.
- (7) Payment by Electronic Funds Transfer ("EFT").
 - (a) Electronic Funds Transfer shall mean any transfer of funds other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.
 - (b) To facilitate payment between wholesale licensees and the retail on-premise and off-premise consumption licensees, electronic funds transfers are an approved method of payment; however, participation by the retail on-premise and off-premise consumption licensees shall be voluntary. The wholesaler shall initiate the electronic fund transfer transmittal. Payment is considered to be made when the funds are deposited in the wholesale licensee's account.
 - (c) The provisions of subsection (7) are not intended to otherwise affect or amend subsections (1) through (6) of this rule 0100-6-.04.

Authority: T.C.A. §§57-1-201 and 57-1-209. **Administrative History:** Original rule filed September 9, 1983; effective October 11, 1983. Amendment filed August 15, 1997; effective December 29, 1997.

0100-6-.05 DUAL PERMITS PROHIBITED.

- (1) No person shall be issued more than one of the following permits:

(Rule 0100-6-.05, continued)

- Manufacturer or importer representative permit,
 - Wholesale salesman or representative permit,
 - Wholesale employee's permit,
 - Off premises retail employee's permit,
 - On premises retail employee's permit.
- (2) However, notwithstanding the foregoing language, any individual may be issued both an off-premise retail employee permit and an on-premise server permit if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.

Authority: T.C.A. §§57-1-201 and 57-1-209. **Administrative History:** Original rule filed September 9, 1983; effective October 11, 1983. Amendment filed August 15, 1997; effective December 29, 1997.